THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 5687 of 2007

O R D E R: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed by the wife of the alleged detenu seeking to issue a writ of Habeas Corpus directing the respondents to produce the detenu Chinta Bhupathi Reddy @ Bhupa Reddy and to release him by setting aside the order of detention made by the 2nd respondent in RC.No. 687/2007/C4 dated 5.3.2007 as illegal and arbitrary.

Heard the learned counsel for the petitioner and the learned Assistant Government Pleader appearing on behalf of the learned Advocate General for the respondents.

By the order impugned in this writ petition, the 2nd respondent directed detention of Chinta Bhupathi Reddy @ Bhupa Reddy under Section 3(2) read with Section 3(1) of A.P. Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act') on the ground that the detenu is indulging constantly in bootlegging activities and thereby affecting the public order. The case of the petitioner is that the ground taken by the 2nd respondent that the detenu is constantly indulging in boot legging activities in and around Kovvuru Mandal and causing injury to the public order is false and baseless. The first ground on which the 2nd respondent relied for passing the detention order is that the detenu is involved in Cr.No. 161/2006-07 dated 21.7.2006 of the Prohibition and Excise Station,

Kovvuru, which is registered against the detenu basing on the confessional statement of co-accused in that crime. The confessional statement of co-accused is inadmissible in the Court of law and the same ought not to have been taken into consideration by the 2nd respondent for passing the impugned order. It is the further case of the petitioner that the 2nd respondent has not furnished the relevant documents like bail orders relating to the cases in which the detenu was released and those documents are vital for the 2nd respondent for arriving at the subjective satisfaction to pass the detention order and this is a serious lapse committed by the 2nd respondent. It is also the case of the petitioner that the detenu is not the manufacturer of the liquor alleged to have been seized and in all the three grounds mentioned in the detention order it is stated that the detenu is involved in the offences under the A.P. Excise Act for possessing liquor. Therefore, it is contended by the learned counsel for the petitioner that the detention order is vitiated by so many irregularities and not according to law and therefore the same may be set aside and the detenu be directed to be released forthwith.

The 2nd respondent filed counter affidavit denying the allegations in the writ petition. It is stated in the counter affidavit that the detenu involved in Cr.Nos. 161/2006-07 dated 21.7.2006, 169/2006-07 dated 26.7.2006 and 68/2006-07 dated 20.7.2006 of Prohibition and Excise Station, Kovvuru for possession and transportation of various quantities of liquor bottles containing “coloured flavoured liquor, unfit for human consumption” and the material placed before him disclosed that the activities of the detenu fall within the definition ‘Bootlegger’ as defined under Section 2(b) of the Act 1 of 1986 and accordingly the detention order is passed after

satisfying himself that the circumstances exist for passing the order of detention. It is further stated in the counter affidavit that in Cr.No. 161/2006-07 the detenu is accused No.2 and accused No.1 in that crime stated that 129.60 litres of spurious liquor was being supplied to the detenu and the same was confiscated and the sample of the said liquor was sent for chemical examination to the Government Chemical Examiner, Prohibition & Excise, Kakinada. Likewise, in Cr.No. 169/2006-07 the detenu was found in possession of 17.28 litres of spurious liquor and in Cr.No.68/2006-07 the detenu was found in possession and transportation of 25.92 litres of spurious liquor and thus it is clearly revealed that the detenu involved in bootlegging activities and thus the detention order is passed on justified grounds. It is further stated that the respondent No.2 did not rely on bail application or bail order and therefore the detenu was not supplied with the copies of the bail application or the bail order. It is thus pleaded that the writ petition is liable to be dismissed.

Having heard the rival contentions of the learned counsel for the petitioner as well as the learned Assistant Government Pleader appearing on behalf of the learned Advocate General, this Court once again perused the material available on record. While coming to the conclusion that the detenu involved in bootlegging activities, the 2nd respondent relied on the confession statement of accused No.1 in Cr.No. 161/2006-07 in which the detenu was shown as accused No.2. It is the contention of the learned counsel for the petitioner that such confession of co-accused is inadmissible to pass detention order against the detenu. It is true that confession of co-accused cannot be the sole basis to take a definite stand against the detenu but it may be taken into consideration in addition to the other attending circumstances. To consider the confession of a co-accused,

it should be seen whether the confession was perfectly voluntary and if so, whether it is true and trustworthy. The apex Court time and again observed that the confession of co-accused is a very weak type of evidence and it is less weak than that of the evidence of an accomplice because an accomplice would be subjected to give evidence on oath and cross-examination whereas it is not so in the case of confession of co-accused. Therefore, the ground taken by the 2nd respondent while passing the detention order that the co-accused in Cr.No.161/2006-07 confessed against the detenu cannot be sustained.

The contention of the learned Assistant Government Pleader appearing for respondent No.2 is that the non-supply of bail application or bail order may not vitiate the detention order. For that, she cited a decision of the Supreme Court in **Sunila Jain v. Union of India and another**.[1] where it is held by the Supreme Court that non-supply of bail application may not be a ground for setting aside the detention order. But, in this case, it is the specific case of the learned counsel for the petitioner that the detenu was not supplied with either bail application or bail order. Non-supply of bail application, as rightly held by the Supreme Court, may not be a ground for setting aside the detention order but non-supply of bail order is certainly a relevant aspect in considering whether the detention order is bad in law or not. For this purpose, it is pertinent to note the decisions of the apex Court as well as this Court relating to this aspect, which are as under:

The Supreme Court in **Icchu Devi v. Union of India**[2] 1983 held "when clause (5) of Article 22 and Sub-Section (3) of Section 3 of the COFEPOSA Act provide that the grounds of detention should be communicated to the detenu within five of fifteen days, as

the case may be, what is meant is that the grounds of detention in their entirety must be furnished to the detenu. If there are any documents, statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu, because being incorporated in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be complete without them. It would not therefore be sufficient to communicate to the detenu a bare recital of the grounds of detention, but copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time subject of course to clause (6) of Article 22 in order to constitute compliance with clause (5) of Article 22 and Section 3, sub-section (5) of Article 22 and Section 3, sub-section (3) of the COFEPOSA Act. If this requirement of clause (5) of Article 22 read with Section 3, sub-section (3) is not satisfied, the continued detention of the detenu would be illegal and void".

In **M. Ahamedkutty v. Union of India and another**[3] the Supreme Court held that the detenu has right to have copies of vital documents irrespective of whether he knows about their contents or not. It is further held:

> "Considering the facts the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired, and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of

> detention and without them the grounds themselves could not be said to have been complete. It must therefore, be held that it amounted to denial of the detnu's right to make an effective representation and that it resulted in violation of Article 22(5) rendering the continued detention of the detention illegal and entitling the detenu to be set at liberty in this case".

The above decision makes it amply clear that the bail application and the bail order are vital material for consideration. It is stated by the 2nd respondent in the counter affidavit that he has not relied on the bail application or the bail order for coming to the subjective satisfaction to pass the detention order and therefore not furnishing the bail application and the bail order would not vitiate the order of detention. As held by the Supreme Court in **M. Ahamedkutty's** case (referred (3) supra), if the bail application and the bail order were not considered, the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete.

In an unreported order in W.P. No. 11247 of 2006 dated 30-8-2006, a Division Bench of this Court held "Importantly, the failure in recording the enlargement of the detenu on bail is undoubtedly a ground to quash the order of detention".

In another unreported order in W.P. No. 25192 of 2006

dated 9.2.2006, another Division Bench of this Court dealing with similar fact- situation held “It appears to us that the officer was not even aware of the fact that in all the three cases, the competent Court had granted bail to the petitioner’s husband and he was a free man on the date of detention. This omission is too serious to be ignored by the Court because, as mentioned above, the order of detention has grave adverse consequence on the liberty of an individual”.

From the above decisions it is amply clear that non-supply of bail order cannot be viewed lightly and it amounts to a serious lapse on the part of the authority who passed the detention order. While passing the detention order, the concerned authority is under an obligation to consider all the relevant material and failure to consider such material would impair the satisfaction of the detaining authority in passing the detention order. All such material must be supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. There is no mention in the detention order as to whether the competent Court had granted bail to the detenu.

For the foregoing reasons, the order of detention passed by the 2nd respondent dated 5.3.2007 is liable to be set aside. However, the efforts made by the learned Assistant Government Pleader for persuading us are appreciated.

In the result, the order in Ref. No.687/2007/C4 dated 5.3.2007 passed by the 2nd respondent herein is quashed and the writ petition is allowed. The detenu by name Sri Chinta Bhupathi Reddy @ Bhupa Reddy s/o Late Sri Rama Krishna Reddy, Hindu, aged about 36 years, occupation: cultivation, resident of Ravulapalem village and mandal, East Godavari District is directed to be released forthwith, if not required in any other case.

T. MEENA KUMARI, J.

G. CHANDRAIAH, J.

Date: 24-04-2007.

MVB.

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[1]. (2006) 3 Supreme Court Cases 321

[2] AIR 1980 SC

[3] (1990) 2 Supreme Court Cases 1